

**UNAPPROVED MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, August 16, 2005  
**Time:** 6:00 PM (Closed Session)  
7:00 PM (Public Business)  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd.

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano and Livengood  
ABSENT: Councilmember Polanski

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following:

**CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING**

City's Negotiator: Carmen Valdez

Anticipated issues under negotiation: Wages, Hours, Benefits, and Working Conditions

Pursuant to CA Government Code §54957.7. Organizations represented:

Milpitas Police Officers Association

International Association of Firefighters

Milpitas Employees Association

The City Council reconvened in Open Session at 7:09 PM with Mayor Esteves presiding and four Councilmembers present.

**CLOSED SESSION  
ANNOUNCEMENTS**

No announcement from the Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 led all present in the Pledge of Allegiance.

**MINUTES**

MOTION: to approve meeting minutes of the August 2 City Council meeting, as amended by Councilmember Giordano.

Motion/Second: Councilmember Giordano/ Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Polanski)

**SCHEDULE OF MEETINGS**

MOTION: to approve the Schedule of Meetings

Councilmember Livengood stated there would be a change in the date for the Library Subcommittee meeting (would not be held on August 23), possibly August 30.

Motion/Second: Councilmember Livengood/ Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Polanski)

**PRESENTATIONS**

None

## CITIZENS FORUM

**Bill Weisgerber**, San Jose and **Judy Lowry**, spoke regarding the recent Relay for Life in July in Milpitas. Mr. Weisgerber thanked the Council for its generous support. This year, there were 500 participants, 40 teams put together in 60 days, and \$75,000 raised for cancer. Mr. Weisgerber recognized Recreation Manager Bonnie Greiner and Police Chief Tom Nishisaka for their departments' help, and presented a plaque to the City from the American Cancer Society for its generous contribution.

**Joe Lowry**, Milpitas resident, recently attended traffic school, due to a speeding ticket he received on Main St., where there are multiple speed limits along the road. His ticket was for the 25 mph zone nearby the former Senior Center. The building has been closed for one year already. He urged a study to set speed limits for the conditions that are actually out there.

Vice Mayor Gomez responded that the issue could be discussed at the next Subcommittee on Transportation.

Mayor Esteves asked Police staff aloud regarding what was the reason for the speed limit exactly? He asked the City Manager if the Police Chief could respond about this. City Manager Lawson said the City Engineer could review this issue for the City Council.

**David Bland**, Alviso Adobe Court resident, spoke on behalf of neighbors. While they would love to have a park next to their homes, they wanted their street to remain a Court. He referred to a letter and one public meeting held on this topic. Residents like the park concept, but wanted more time and effort to go into the planning for it, with more concern for the neighbors.

**Sal Guardino**, Alviso Adobe Court resident, spoke to the master plan change relative to his neighborhood. He looked forward to a new park, but neighbors were unanimous that the change would waste resources and park space. 22% of land would be used as a driveway, with the park near a church. He believed it presented new dangers to residents there. He asked Council to reject the current plan change and suggested that design alternatives exist which could be checked out.

Councilmember Giordano responded that maybe there should be another meeting with residents before staff comes to Council with the plan. She asked staff if this matter would go to the Planning Commission. Ms. Tambri Heyden responded that the mitigated negative declaration would come to the City Council while other actions (CEQA clearance and other steps) would go before the Planning Commission in November.

Vice Mayor Gomez requested a memo to Council from staff on this issue.

## ANNOUNCEMENTS

**Mayor Esteves** made an announcement regarding Farmer's Market status. The last day the Market would be held at Town Center would be on Sunday, August 21. Discussion was ongoing with VTA for the park-and-ride lot as a possible temporary site. The Mayor would provide a more formal update at the next Council meeting.

**Councilmember Giordano** inquired on the status of the issue of invocation at Council meetings. Assistant City Attorney Richard Pio Roda reported that his office was drafting guidelines.

## ANNOUNCEMENT OF CONFLICT OF INTEREST

None

## APPROVAL OF AGENDA

Councilmember Giordano requested to remove Item #9, and to discuss it after Item #3.

MOTION: to approve the agenda, with consent calendar change noted.

Motion/Second: Vice Mayor Gomez/ Councilmember Giordano

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Polanski)

## CONSENT CALENDAR

Councilmember Giordano requested pulling Items No. 6 and No. 9 off consent for discussion.

Mayor Esteves requested pulling Items No. 11, No. 13 and No. 14 off consent for discussion.

MOTION: to approve the Consent Calendar, as amended, with five items removed for discussion.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Polanski)

**\* 5. Funding \$1,000 For  
Milpitas Little League Senior  
All-Star Team**

Approved \$1,000 funding to the Milpitas Little League's 2005 Senior All-Star Team.

**\*8. Use of Asset Forfeiture  
Funds**

Approved Asset Forfeiture funds in the amount of \$8,500 to purchase a new canine.

**\*12. Waive Reading and  
Adopt Ordinance No. 238.2  
Amending Title VIII, Chapter  
5 (Water Efficient Landscapes)  
and Ordinance No. 240.1  
Amending Title VIII, Chapter  
6 (Water Conservation)**

1. Waived reading beyond the title and adopted Ordinance No. 240.1.

2. Waived reading beyond the title and adopted Ordinance No. 238.2.

**\*15. Approve Tow Rate  
Increase**

Approved the increase in tow rate changes, as recommended by Police Department staff.

Rates changed as follows:

<u>Rotation Tow Fees</u>	<u>Current</u>	<u>Approved New Rates:</u>
Basic Rate	\$120	\$125
Labor Rate	\$30 per ¼ day	\$31.25 per ¼ day
Storage	\$35 per day	\$40 per day
Road Service	\$50	\$62.50
After Hours Release	None	\$62.50

**\*16. Adopt Resolution  
Granting Final Acceptance:  
Manor Pump Station  
Improvements, Projects  
Numbered 3385 and 3396**

Adopted Resolution No. 7550 granting final acceptance and release of the Contractors bond for Project No. 3385 and Project No. 3396

**\*17. Adopt Resolution  
Amending Pre-Tax Payroll  
Deduction Plan For Service  
Credit Purchase Under  
Internal Revenue Code 414  
(h)(2) Contribution Code 14**

Adopted Resolution No. 7551 amending the pre-tax payroll deduction plan for service credit purchases under Internal Revenue Code (IRC) Section 414(h)(2) (Contribution Code 14) for City of Milpitas employees who are members of the coverage groups (specified in the resolution.)

**\*18. Approve Plans And  
Specifications And Authorize  
The Advertisement For Bid  
Proposals: Sports Center  
Underwater Pool Lighting &  
Resurfacing Of Swimming  
Pools, Project No. 8163**

Approved the plans and specifications and authorized advertising for bid proposals for the project.

- |   |   |
|---|---|
| <p><b>*19. Approve Consultant Services Agreement For Workers' Compensation Third Party Administrator ("TPA") Services</b></p>   | <p>Authorized the City Manager to execute a contract with Southern California Risk Management Association, effective November 1, 2005 through June 30, 2008, in accordance with the terms and conditions stated in the Request For Proposals.</p>   |
| <p><b>*20. Approve Contract With Skyhawks Sports Programs for Summer 2005 Sports Camps</b></p>  | <p>Authorized the City Manager to execute a contract with Skyhawks Sports Programs for Kids for Summer 2005 Sports Camps for the not to exceed amount of \$24,000, subject to approval as to form by the City of Attorney.</p>  |
| <p><b>*21. Reject Bids and Authorize the Re-advertisement For Bid Proposals: Storm Water Pump Station Improvements, Project No. 8106</b></p>                                | <p>Rejected all bids, and approved the re-advertisement of the project for bid proposals for the project.</p>   |
| <p><b>*22. Authorize City Manager To Execute Agreement: Kennedy/ Jenks Consultants, Venus Way Sewer Pump Station Improvements, Project No. 6101</b></p>                     | <p>Authorized the City Manager to execute an agreement with Kennedy/Jenks Consulting Engineers, for an amount not to exceed \$28,400 for the design of the Venus Way Sewer Pump Station Improvements, subject to approval as to form by the City Attorney.</p>                                      |
| <p><b>*23. Approve Agreement for Purchase of Real Property; Property Owner, Korean First Baptist Church of San Jose; Montague Expressway Widening, Project No. 4179</b></p> | <p>Approved Agreement for the Purchase of Real Property in the amount of \$4,800, from the Korean First Baptist Church of San Jose.</p>   |
| <p><b>*24. Award the Bid for Hydraulic Trailer</b></p>  | <p>Awarded the bid for the purchase of one Jacobsen Selma Hydraulic Trailer to Action Trailer, in the amount of \$7,307.37.</p>   |
| <p><b>*25. Award the Bid for Sidewalk Repair, Curbs &amp; Gutters, Project No. 4067</b></p>   | <p>Awarded the bid for sidewalk repair, curbs and gutters to JJR Construction, Inc. for the not to exceed amount of \$185,000.00 annually, and authorized the City Manager to execute the contract, subject to approval as to form by the City Attorney.</p>  |
| <p><b>*26. Award the Bid for Police Emergency Equipment Installation</b></p>  | <p>Awarded the bid for Police Emergency Equipment Installation to Emergency Vehicle Solutions for \$2,250.00 per vehicle (not to exceed \$25,000) annually and authorized City Manager to execute contract, subject to approval as to form by the City Attorney.</p>                                |
| <p><b>*27. Award the Bid for Security Cameras and Digital Video Recording Equipment at the New Corporation Yard, Project 6079</b></p>                                       | <p>Awarded the bid and authorized the City Manager to execute a contract with Network Design Communications for the purchase and installation of security cameras for the new corporation yard in the not to exceed amount of \$13,720.94, subject to approval as to form by the City Attorney.</p> |
| <p><b>*28. Approve Payment of the CAL-ID Invoice to the City of San Jose for \$55,748</b></p>   | <p>Approved CAL-ID invoice to the City of San Jose in the amount of \$55,748.</p>   |
| <p><b>*29. Approve Payment to the Economic Driving School for Driver's Education Classes for FY 2005-06</b></p>   | <p>Approved contractual fees with the Economic Driving School not to exceed \$19,600.00 for FY 2005-2006, for the current year's driver's education classes.</p>  |

**\*30. Approve Payment to City of Fremont Tennis Center for Tennis Instruction FY 2005-06**

Approved contractual fees with the City of Fremont for tennis lessons in the amount not to exceed \$20,000.00, to the City of Fremont for FY 2005-2006.

**\*31. Approve Payment Request to One Vendor**

Approved the following one request over \$5,000.00 for approval: \$6,296.00 to Simtel, Inc. for annual hardware and software maintenance on the EOC Teleminder notification system for the Fire Department. (Funds are available in the Fire Department operating budget for these services.)

**PUBLIC HEARING**

**1. Approve Fairfield Midtown Vesting Major Tentative Tract Map (MA2005-4) Application To Create Two Parcels, Located At Corner Of Abel, Main And Great Mall Parkway And Create 481 Condominium Units (APN's: 086-12-015, 016, 020) Zoned R4-TOD (Multi Family Very High Density With A Transit Oriented Overlay), Applicant: Fairfield Residential LLC**

Acting Planning Director Tambri Heyden, presented the Tract Map, approved by the Planning Commission earlier in May. The applicant would like to subdivide his property into two parcels, over a total of eight acres at Main and Abel, at the Great Mall Parkway. Each parcel would have suitable parking space for the units to be constructed.

Mayor Esteves re-opened the continued Public Hearing to hear any testimony (there was none).

(1) MOTION: to close the public hearing

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

(2) MOTION: to approve the Fairfield Residential Vesting Major Tentative Tract Map (MA 2005-4), based on the findings and special conditions noted in the planning department staff report.

Motion/ Second: Vice Mayor Gomez/ Councilmember Livengood

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

**UNFINISHED BUSINESS**

**2. Adopt Resolution Establishing a Cost Recovery Program for Preparation of the Transit Area Specific Plan**

Acting Planning Director Tambri Heyden, prepared this report per Council's direction at the July 5 Council meeting. Regarding Phase II of the Transit Area Specific Plan, staff had set up mechanism to recover costs of the consultant and staff time. A one-time fee for applicants (developers) would be established to cover the costs. A couple of specific exemptions were included in the proposal.

A record would be kept on those who paid the one-time fee. The fee would be spread out over time and approximately \$1.3 million could be recovered, at the rate of \$.083/sq. ft. of land. There are planned higher density developments anticipated in the area.

Councilmember Giordano inquired if this was the first time the City had used cost recovery in this manner, and the response was no. She further asked if developers would be notified of the fee, at the time the plan was approved. Ms. Heyden responded yes.

Mayor Esteves asked if City infrastructure costs were included in this cost recovery plan. Ms. Heyden said no, it was strictly for the preparation of the plan.

Councilmember Livengood emphasized these points: 1) the cost recovery was for the taxpayers of Milpitas, and 2) it was not an onerous amount charged to developers – he felt it would save the developers money in the long run actually.

Mayor Esteves asked who developed the cost recovery plan. Ms. Heyden responded that City planning staff prepared the proposed cost recovery.

MOTION: to adopt Resolution No. 7548 establishing a cost recovery fee program for the preparation of the Transit Area Specific Plan in Milpitas.

Motion/Second: Councilmember Livengood/Councilmember Giordano

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

**3. Authorize City Manager to Negotiate Contract with Dyett And Bhatia, Urban And Regional Planners, to Conduct Phase II of Transit Area Specific Plan for ±400 Acre Area Around the Light Rail and Future Montague/ Capitol BART Stations**

Ms. Tambri Heyden reminded the Council that this matter was discussed on July 5. City Council considered this issue but additionally requested the cost recovery plan, and as well as a response as to why only one consultant bid.

The draft contract with Dyett and Bhatia had been distributed to the City Council. It would cover a 14-month project, with eight specified tasks over Phase II. Staff asked that Council recall Phase I of this project and that two concepts had been considered. Now, staff would refine this work further, would remove Transit Area Specific Plan from the MidTown Specific Plan, develop on its own, with much planning activity (regarding rezoning, amendments, etc.)

All of the described work exceeds the budgeted amount for this plan, based on the adopted budget for the current fiscal year. The supplemental Environmental Impact Report was under way, and next would review the aerial lines segment around the transit station in addition to streetscape plans. A 15% contingency fee was added into the proposal. In total, approximately \$197,000 was added to the budget.

Ms. Heyden strongly urged the City Council to authorize the higher amount for all current activity by outside agencies on this part of Milpitas. Also, Ms. Leslie Gould of Dyett & Bhatia was present to answer questions. The Mayor asked if the circulation plan was included, and staff responded yes.

Councilmember Livengood supported the higher dollar amount, but did not want this matter to come back to the Council with any higher request for money. Staff and consultant had enough direction now, but he did want to revisit it in the future.

The proposed timetable for the consultant's plan was 14 months, with a frequency of reporting to Council at two points, both to the Planning Commission and the City Council for approval of the preferred concept plan. Five meetings with "stakeholders" were planned, reported Ms. Gould.

Recommendation to the Council was: to authorize the City Manager to negotiate a contract with Dyett and Bhatia, Urban and Regional Planners, to conduct Phase II of the Transit Area Plan as outlined in the staff report and Scope of Work for the approximately 400 acre area around the light rail and future Montague/Capitol BART stations, in an amount not-to-exceed \$672,635. This action necessitated approval of a budget appropriation of \$197,635 from Redevelopment Agency funds for additional costs as detailed.

MOTION: to authorize the amount of \$672,635 for a contract with Dyett & Bhatia and to approve the budget appropriation necessary.

Motion/ Second: Councilmember Livengood /Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

## JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. CALL TO ORDER** Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:00 PM.
- RA2. ROLL CALL** PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez, and Agency/Councilmembers Giordano and Livengood
- ABSENT: Agency/Councilmember Polanski
- RA3. MINUTES** MOTION to approve the Redevelopment Agency minutes of August 2, 2005, including joint meeting with the City Council, as submitted.
- Motion/ Second: Agency/Councilmember Livengood/ Vice Chair/Vice Mayor Gomez
- Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)
- RA4. AGENDA** MOTION to approve the agenda and consent calendar items, as submitted.
- Motion/Second: Agency/Councilmember Livengood/ Agency/Councilmember Giordano
- Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)
- RA5. PUBLIC HEARING**
- Approve The Density Bonus, "S" Zone No. SZ2005-6 And Use Permit No. UP2005-13 For Senior Housing Project At 163 No. Main Street**
- (1) Planner Staci Pereira spoke to the Agency regarding the "S" zone approval request. Entitlement applications were submitted for S Zone approval for a new 4 story residential building, the redevelopment of the historic DeVries home, a use permit for set backs and parking reduction request for residential parking. This project would be located across the street from the new Milpitas library site on Main Street. The future county health facility would be located next door. Ms. Pereira reviewed details of the project, including a description of the Density Bonus requested by the developer. A total of 102 units plus a manager unit were proposed.
- Approve Fair Use Report For the Disposition of the Land**
- One suggestion provided by Seniors in Milpitas would be accommodated, a passenger drop-off/loading zone. In addition, seniors suggested the addition of an elevator at back. The latter idea was being researched, but may be too expensive.
- Authorize the Redevelopment Agency Executive Director To Enter into a Disposition And Development Agreement and Related Documents With Mid-Peninsula Housing Coalition Addressing the Sale And Development of DeVries/ Smith House and Adjacent Property As An Affordable Senior Housing Project**
- The Parks and Cultural Resources Commission requested that items be saved from the home that could be included in an historical inventory. The Commission also requested a tour of the renovated DeVries home when construction was complete.
- (2) Principal Housing Planner Felix Reliford introduced the project and specifically the Developer and Disposition Agreement with MidPeninsula. He reviewed legal boundaries of the project area including the DeVries/smith home. Mr. Reliford introduced the Mid Peninsula Housing Coalition as the partner house, agreements on financial conditions, and the regulatory agreement.
- And Authorize the Making of a Loan and Grant to Assist in the Development of the Project**
- Mr. Reliford explained that the DDA was the legal instrument to implement the senior housing development, which included twelve separate documents, including Resolutions, the grant deed, a series of loan and grant agreement, terms and conditions, regulatory agreement for low income requirements, an agreement with the County for the shared driveway and façade easement. The DDA completes the land conveyance and transfer, also. A summary of financial terms was provided.
- Consultant Mr. Robert Whitmore spoke regarding the Fair Re-use report of this project.

California law says that tax use increment requires these findings of the Agency: 1) the cost of \$9.6 million from RDA set aside fund, 2) the estimated value to be conveyed or leased (a disclosure of what it would get in the open market, presently valued at medium density for about \$2.5 million), 3) estimated value of amount to be conveyed in the re-use of the site (it's nominal because its use will be targeted to low income and extremely low income residents and included was the re-vamp of DeVries home), 4) the sale of the property would assist in the elimination of blight on an underused parcel, and 5) the sum of the purchase price would be \$10.5 million to be paid by the developer.

Mr. Reliford reported that last month, four names were submitted by MidPeninsula Housing to the Council's Facilities Naming Subcommittee and the recommendation reported out was to name the new project "DeVries Place."

Ms. Myra Blitzer of MidPeninsula Housing Coalition, the non-profit organization that would develop this project introduced her staff and the architect on the project. MidPeninsula has existed for 30 years, and currently managed 80 properties in the greater Bay Area. She reviewed some of the details and highlights of DeVries project, including the photovoltaic panels on the roof as well as the rooftop garden.

Mayor Esteves inquired about turnaround space for Fire Department vehicles. Ms. Blitzer and Ms. Pereira responded that the City's Fire Marshal had thoroughly reviewed the project and had given her approval to the project.

Ideally, construction would be finished in 2008, and seniors could move in at that time.

Councilmember Livengood inquired about the common driveway. He was concerned that the senior housing project stands on its own. He cared about the deal struck regarding the County garage and its new health facility. Ms. Blitzer responded that yes, this project stood alone regardless of common driveway with County.

Ms. Fran Wagstaff of MidPeninsula responded to financing questions posed by Council member Livengood. The RDA would have to approve any change in leveraged funds, new mortgage, etc.

Councilmember Giordano inquired about parking ratios and the number of parking spaces for residents vs. users of the community space. She also asked why there were three units on top of the DeVries House (rather than space for community groups).

Councilmember Giordano asked Mr. Reliford about the DDA and the loan and grant agreement, and what is "rehabilitative" as defined in the documents? He reviewed some of the costs relative to the DeVries house needing particular attention and cost for moving the structure.

Mayor Esteves asked about the reduction in the minimum setback from 8 feet to 6 feet, and comparison to the setback for the proposed library across the street. Staff Mark Rogge responded that the library set back would match the existing building on that site, with slightly wider sidewalks for the public use area there as compared to the senior housing across the street.

The Mayor inquired further about a possible "balloon" payment at end of the financing terms. Consultant Mr. Whitmore explained that the city's loan would be paid out of surplus cash flow, to pay down the loan. If that money were not available, then the loan would not get repaid, and instead the City then would owe both principal and accrued interest and be due at the end of the loan term (55 years). That unlikely scenario could necessitate a balloon payment.

Finally, Mr. Reliford thanked the Engineering staff, MidPeninsula Housing Coalition, the architect, the City's Planning Department and in particular, Ms. Sue Block of the law firm Meyers, Nave, as she was the lawyer who wrote many of the documents produced for the

Agency this evening.

Agency Chair/Mayor Esteves opened the joint public hearing. No members of the public came forward to speak on this matter.

(1) MOTION: to close the public hearing

Motion/Second: Agency/Councilmember Giordano/ Vice Chair/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

(2) MOTION: to authorize the following actions:

City Council approved the "S" Zone No. SZ2005-6, Use Permit No. 2005-13 and the requested Density Bonus.

City Council adopted Resolution No. 7552 approving the Fair Re-use Report and the conveyance of the property.

Redevelopment Agency adopted Resolution No. RA241 approving the Fair Re-use Report, adopted findings in connection therewith, approved the Disposition and Development Agreement and related documents and approved the loan and grant.

Approved "DeVries Place" as the official name of the Senior Housing Project, as recommended by the Facilities Naming Subcommittee.

Agencymember Livengood included in his motion that staff will return to the City Council at a future meeting with specific architectural details about the rehabilitation and renovation of the DeVries/Smith home.

Motion/Second: Agency/Councilmember Livengood/ Vice Chair/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

**\*RA 6. Adopt a Resolution of the Redevelopment Agency Approving Execution of an Owner Participation Agreement with Shapell Industries of Northern CA**

Adopted Resolution No. RA242 of the Redevelopment Agency which approved the execution of an Owner Participation Agreement with Shapell Industries of Northern California, LLC, and making certain the findings noted.

**\*RA 7. Adopt a Resolution of the Milpitas Redevelopment Agency Approving the Execution of an Owner Participation Agreement with Fairfield Development, LLC**

Adopted Resolution No. RA243 of the Redevelopment Agency which approved the execution of an Owner Participation Agreement with Fairfield Development, LLC and made the findings contained within the Resolution.

**\*RA 8. Approve a Request for Proposal for Sale And Relocation of the "Winsor Blacksmith Shop" Building At 116 N. Main Street**

1. Declared the buildings and personal (chattel) property at 116 N. Main Street as surplus and suitable for disposal in accordance with City policy.
2. Approved the Request for Proposals (RFP) to offer the "Winsor Blacksmith Shop" for sale and removal, and authorized staff to advertise the Request for Proposals.

**RA 9.  
ADJOURNMENT**

Chair/Mayor Esteves announced the Agency would take a break at 9:28 PM.

At 9:36 PM, Chair/Mayor Esteves reconvened the Agency and re-opened meeting.

In order to adopt the three items on Redevelopment Consent Calendar, the Agency took the following action.

MOTION: to amend the Agency's agenda to add a vote on the consent calendar and subsequently to vote to approve the RDA Consent Calendar.

Motion/second: Vice Chair/Vice Mayor Gomez/ Agencymember Giordano

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 9:37 PM.

**REPORTS OF OFFICERS AND BOARDS**

**4. Smoking Enforcement and Restrictions in Public Parks and Other Public Areas**

Mayor Esteves brought this matter to the public, regarding smoking in public places including parks. He wanted staff to consider potential future restrictions.

Vice Mayor Gomez expressed his desire that it was prudent to permit the Parks and Cultural Resources Commission further investigate this subject. That Commission and the City Council could bring public attention to the issue under discussion.

Mayor Esteves suggested a look at other cities' practices, especially in light of the recent County report from a tobacco study that Milpitas was failing in smoking reduction. While he had brought this issue forward on the agenda, the Mayor expressed his willingness to wait for further information on smoking in parks

MOTION: to allow the Parks Commission to continue with work its members were doing (with no Council action on this item at this time)

Motion/second: Vice Mayor Gomez / Councilmember Livengood

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

**6. Request for Support for Assembly Bill 438 - Megan's Law Impacts on Housing Providers**

Councilmember Giordano expressed her reasons for requesting support for this bill in Sacramento. Rental housing owners could use a database of sexual offenders for informing residents, with concern for their safety. They would use the internet to provide information to tenants. Ms. Giordano pointed out that concern for children in all aspects was important to the public in Milpitas.

Councilmember Livengood asked whether Milpitas was keeping a close eye on sexual offender registrants in this city. He recognized that they must comply with the law, and the police must keep track of these folks and where they live (the AB 290 registrants).

City Manager Lawson responded that the City did indeed follow up on this subject, and that to his knowledge there were less than 100 offenders presently residing in this City.

MOTION: to adopt Resolution No. 7553 Supporting AB 438, and to direct the City Clerk to send a letter to the Assembly expressing the City's action in support.

Motion/Second: Vice Mayor Gomez / Councilmember Livengood

Motion carried by a vote of:       AYES: 4  
  NOES: 0  
  ABSENT: 1 (Polanski)

**7. Receive Report From  
the Facilities Naming  
Subcommittee**

Councilmember Livengood reported on the recent meeting of the Council Facilities Naming Subcommittee.

Mr. Livengood stated that the subcommittee had met on August 1. At that meeting, six specific name recommendations for Milpitas facilities were developed that were presented to the Council:

1. Milpitas Community Library
2. Authorize a room in the new Library named after Dr. Martin Luther King Jr.
3. Senior Center renamed after former Councilmember Barbara Lee, so it would become the "Barbara Lee Milpitas Senior Center"
4. DeVries Place, for the new housing plan on S. Main St.
5. Honor Cesar Chavez with a City holiday (in next round of labor negotiations)
6. Get more feedback from Sunnyhills Neighborhood Association to receive a recommendation from them for appropriate recognition of Mr. Neil McKenzie -- a long time resident/activist from that neighborhood

Mr. Livengood hoped to develop an appropriate ceremony for the naming of the Senior Center (recommendation No. 3). Mayor Esteves about the reason for recommendation 3.

(1) Motion: approve recommendations 1, 2, 4, 5, and 6 listed above (not including No. 3)

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:       AYES: 4  
  NOES: 0  
  ABSENT: 1 (Polanski)

(2) Motion: approve recommendation No. 3 naming the Senior Center after Ms. Lee, and request the Naming Subcommittee return with an appropriate ceremony recommendation to honor Ms. Lee

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:       AYES: 3  
  NOES: 1 (Esteves)  
  ABSENT: 1 (Polanski)

**NEW BUSINESS**

**9. Approve 14 Cultural Arts  
Support Program Applications  
for FY 2005-06 Funding Cycle**

This agenda item was heard prior to the Redevelopment Agency agenda.

Before the Council was a request to approve the Arts Commission's recommendations for 14 Cultural Arts Support Program (CASP) grants of either in-kind Services or monetary amounts up to \$2,000.

The grants included the following organizations and dollar amounts:

1. Milpitas Alliance for the Arts: \$1850
2. Bay Area Showcase Chorus: \$1625
3. Calaveras Repertory Theatre: \$2000

4. Milpitas Camera Club: \$2000
5. Fancy Dancers Inc. : \$0 (in kind donation only)
6. Filipino American Association of Milpitas: \$ 500
7. Fremont Symphony Orchestra: \$2000
8. GENCO: \$0 (in kind donation only)
9. Hiyas Phillipine Folk Dance Co.: \$1000
10. Kaisahan of San Jose Inc. : \$1000
11. The Lively Foundation: \$300
12. San Jose Wind Symphony: \$800
13. Sunnyhills Neighborhood Association: \$200
14. Sunnyhills Youth Organization: \$700

Recreation staff Renee Lorentzen explained the City received 15 applications, and 14 were recommended to Council. Cash grant recommendations were solely dependent on Council Finance Subcommittee's efforts to identify a source of funds for cash amounts.

Councilmember Giordano said she wanted to help on the Sunnyhills Youth Association application to allocate money beyond the stated grant purpose (for salary and marketing costs). She explained that the applicants wanted to use some of the \$700 toward supplies as an additional use of any funds granted.

Two young women from Sunnyhills spoke before the Council supporting the comment made by Councilmember Giordano.

Ms. Lorentzen explained that the in-kind assistance offered to the non-profit groups primarily consisted offering of a venue to hold meetings and printed publications, such as flyers. The CASP grants went from \$21,000 total, reduced down to \$14,000 in financial requests in order to satisfy the many groups.

Mayor Esteves specifically inquired about the Filipino American Association. He believed it usually had been allocated \$2,000 from CASP. He was not comfortable with the recommendation because he believed that Milpitas gets more for its money than the \$2,000 requested. Also, the Mayor explained that the Association does a good deal of fundraising on its own.

Councilmember Giordano explained that the proposals came from the Subcommittee of the Arts, then to the full Arts Commission and now to City Council. The proposals have had a great deal of review up to this point.

Public Speakers:

Lynn and Amy of Sunnyhills Youth Association thanked Councilmember Giordano and the City Council for adding supplies to its CASP grant request.

MOTION: to approve the fourteen CASP grant proposals, noting the funding was pending Finance Subcommittee action

Motion/Second: Councilmember Giordano/Councilmember Livengood

Motion carried by a vote of:

AYES: 3  
NOES: 1 (Esteves)  
ABSENT: 1 (Polanski)

## ORDINANCES

### **10. Waive First Reading Beyond the Title and Introduce Ordinance 239.4 Amending Title XI Chapter 16 Sections 16-2, 16-6, And 16-16 of the Milpitas Municipal Code (Stormwater And Urban Runoff Pollution Control)**

Engineer Darryl Wong explained that a new NPDES permit was required by ordinance. It applied to all South Bay cities; and included those in the Santa Clara Valley Water District. The City must comply with treatment of pollutants, with onsite treatment currently.

Three changes were proposed in the updated ordinance:

- 1) When there is one acre or more of impervious surface: change the standards to 10,000 sq ft / acre.
- 2) New provision for rate of flows into creeks: apply to any site that has one acre or more of impervious area with increases
- 3) Definition of connection fees to storm drain was now in the ordinance: with a clarification made to apply to new connections and to redevelopment of site

Mr. Wong then read the title of Ordinance No. 239.4: Amending Title XI Chapter 16, Sections 16-2, 16-6, And 16-16 of the Milpitas Municipal Code (Stormwater And Urban Runoff Pollution Control)

(1) MOTION: to waive the first reading beyond the title

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

(2) MOTION: to introduce Ordinance No. 239.4

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

### **11. Waive Reading Beyond the Title and Adopt Ordinance No. 262.2, amending Section I-310-4.10 of the Milpitas Municipal Code regarding the Open Government ordinance**

Assistant City Attorney Richard Pio Roda read the title of Ordinance 262.2, which would amend the Open Government Ordinance to allow for a City Council Subcommittee to act as the Open Government Committee until December 31, 2006:

An Ordinance of the City Council of the City of Milpitas Amending Section I-310-4.10 of the Milpitas Municipal Code (regarding the Open Government ordinance)

(1) MOTION: waive the second reading beyond the title

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

(3) MOTION: to adopt Ordinance No. 262.2

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 3  
NOES: 1 (Esteves)  
ABSENT: 1 (Polanski)

**13. Waive Reading Beyond  
the Titles and Adopt  
Ordinance No. 120.43 and  
Ordinance No. 208.40 Of Title  
VIII Chapters 1 And 2 Setting  
Utility Rates**

Principal Engineer Darryl Wong explained that these were the water and sewer rate ordinances previously introduced with no changes. According to the public noticing requirements of Proposition 218, customers were notified by written letter of the date for the scheduled protest hearing on September 6.

Mr. Wong read the complete title of the first ordinance regarding water rates, Ordinance No. 120.43: An Ordinance of the City of Milpitas Amending Sections 6.13, 6.14, 6.15 and 6.16, Chapter 1, Title VIII of the Milpitas Municipal Code, Relating to Quantity Charges, Bimonthly Water Meter Charges, Fire Service Charges and Effective Date of Water Rates

(1) MOTION: waive the second reading beyond the title of Ordinance 120.43

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

Mr. Wong read the complete title of the second ordinance regarding sewer rates, Ordinance No. 208.40: An Ordinance of the City of Milpitas Amending Sections 6.01, Chapter 2, Title VIII of the Milpitas Municipal Code, Relating to Sewer Service Charges

(2) MOTION: waive the second reading beyond the title of Ordinance 204.40

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Polanski)

(3) MOTION: to adopt both Ordinances No. 120.43 and 208.40

Motion/Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried by a vote of:

AYES: 3  
NOES: 1 (Esteves)  
ABSENT: 1 (Polanski)

**RESOLUTIONS**

**14. Adopt a Resolution  
Amending the Memorandum  
Of Understanding with  
Milpitas Employee Association**

Mayor Esteves had a question regarding salary increases. Additionally, he asked for comment from colleagues. His issue was a concern about Public Safety employees getting a different amount/percent in future salary increases.

Ms. Carmen Valdez, acting Human Resources Director stated the intent this year was no increases for wages for any employees in the City.

MOTION: to adopt Resolution No. 7549 amending the current Memorandum of Understanding between the City of Milpitas and Milpitas Employee Association to reflect the changes defined in a Side Letter dated July 29, 2005 and extending the MOU through December 31, 2006.

Motion/Second: Vice Mayor Gomez/ Councilmember Livengood

Motion carried by a vote of:

AYES: 3  
NOES: 0  
ABSENT: 2 (Polanski, Giordano)

**BIDS AND CONTRACTS**

Items were adopted on the Consent Calendar.

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 10:12 PM.

Meeting minutes respectfully submitted by:

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Mary Lavelle, City Clerk